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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOHN F. KILGROE,

Plaintiff - Appellant,

v.

AMERICAN SHIP MANAGEMENT,  
LLC; et al.,

Defendants - Appellees,

and

SAILORS UNION OF THE PACIFIC; et  
al.,

Defendants.

Nos. 06-56765

06-56858

D.C. No. CV-05-07314-AHM

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Central District of California  
A. Howard Matz, District Judge, Presiding

Submitted July 22, 2008<sup>\*\*</sup>

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<sup>\*</sup> This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: B. FLETCHER, THOMAS, and WARDLAW, Circuit Judges.

John F. Kilgroe appeals pro se from the district court's judgment for defendants in his action alleging federal and state law violations in connection with his employment on a United States naval ship. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo. *Kimes v. Stone*, 84 F.3d 1121, 1126 (9th Cir. 1996) (dismissal for failure to state a claim); *Dark v. Curry*, 451 F.3d 1078, 1082 n.2 (9th Cir. 2006) (summary judgment). We affirm.

The district court properly dismissed Kilgroe's defamation claims because, under California law, publications in judicial proceedings and communications to an administrative agency are protected from litigation attacking those statements. *See* Cal. Civ. Code § 47(b); *Moore v. Conliffe*, 871 P.2d 204, 219 (Cal. 1994) ("[S]tatements made in the course of a private contractual arbitration proceeding are protected by the litigation privilege"); *Martin v. Kearney*, 124 Cal. Rptr. 281, 282 (Cal. Ct. App. 1975) (holding that a communication to an official administrative agency, designed to prompt action by that agency, is privileged from tort actions).

The district court properly dismissed Kilgroe's abuse of process claim because Kilgroe's allegations regarding misuse of ship logbook procedures did not demonstrate that defendants misused judicial process. *See Adams v. Superior Court*, 2 Cal. App. 4th 521, 530 (Cal. App. Ct. 1992) (explaining that a plaintiff

making an abuse of process claim must show that the “process” at issue was “taken pursuant to judicial authority”).

The district court properly granted summary judgment on Kilgroe’s age discrimination claim because Kilgroe did not raise a triable issue that defendants’ proffered nondiscriminatory reason for refusing to rehire him was a pretext for age discrimination. *See Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1282 (9th Cir. 2000) (explaining that to survive summary judgment, a plaintiff must create a triable issue as to whether the employer’s proffered reasons for the adverse employment action were pretexts for discrimination in violation of the Age Discrimination in Employment Act).

The district court properly granted summary judgment on Kilgroe’s disability discrimination claim because Kilgroe did not raise a triable issue that he would have been able to perform the essential functions of his position with a reasonable accommodation. *See Cleveland v. Policy Management Systems Corp.* 526 U.S. 795, 806 (1999) (explaining that a plaintiff making a claim under the Americans with Disabilities Act bears the burden of proving that a reasonable accommodation would have enabled him to perform the essential functions of the position).

Kilgroe’s remaining contentions are unavailing.

**AFFIRMED.**